02-06 MEE 1 Example 1

1. The Settlor's Family Trust was validly created. At issue is whether a trust may be created with funds not yet received. In Missouri, to create a trust the settlor must: 1. deliver legal title of property 2. to a trustee 3. to be held for the benefit of the beneficiaries 4. with intent to create a trust 5. and a valid purpose. In this case, Settlor declared a trust and wrote the terms on a napkin. He named himself trustee and beneficiaries as himself and his daughter. A trust may have a trustee and a beneficiary as the same person as long as there is another person as trustee and/or beneficiary. Settlor had the intent to create a trust as he expressly stated that he was naming himself trustee. He did not have an invalid purpose. The main problem with Settlor's trust is that he had stated the trust property as the sale proceeds from his plan to sell stock. This is an expectancy. Property needs to be certain and ascertainable. If the stock declines in value before he sells it, he may have no money/property. In-Law's will would not be more than an expectancy because In-Law could revoke the will at anytime before death. Four years later Settlor put the sale proceeds into an account and wrote Settlor as Trustee of Settlor's Family Trust. When a trust was formed with an expectancy and the expectancy becomes real property then the trust may be enacted by express words or an implied act. When Settlor wrote the name of the trust on the account this was enough to revive the trust. Therefore, the will was validly created.

2. Settlor, as trustee of the Settlor's Family Trust is entitled to the In-Law's estate. At issue is whether a will may distribute property to a trust by only name in the will. In Missouri, a will may distribute property (pour-over) by either 1. naming the trust in the will. 2. stating the terms of the trust in the will 3. or having a separate document. If the will is not revoked the property will pass to the trust. Here, In-law referred to the trust (Settlor's Family Trust) in the will. The terms of the trust were stated outside of the will, but this is not a problem. Because the property passed to the trust, Bill will receive nothing.

3. Victim cannot reach the assets of the First Bank account to satisfy Victim's claim against Settlor. At issue is whether a spendthrift clause can prevent a tort victim from reaching the trust. In Missouri, a spendthrift trust is valid. It may prevent either involuntary transfers by creditors attempting to reach the assets or it may prevent voluntary transfers by assigning rights. When a settlor makes a trust and names himself a beneficiary, if the trust is revocable the creditor may be able to reach the assets. Regardless of the spendthrift clause, a creditor may be able to reach what the trustee/settlor receives under the trust. Here, Settlor stated that no creditors of his or his daughter's may reach the trust. Also, he prohibited assignment or selling. This will prevent creditors from reaching the assets (including tort claimants). Because Settlor is entitled to trust income and principal for support at anytime, creditors may be allowed to the reach the maximum amount he receives. Once he receives money, anyone can reach. Because this only allows what Settlor needs for support, he will only receive the amount needed to support himself. Due to the spendthrift clause, Victim cannot reach the maximum amount that Settlor could receive – only what he does receive.

02-06 MEE 1 Example 2

1. Yes, the trust was validly created but only when Settlor deposited the sale proceeds into the bank account. A valid private trust requires (1) a settlor w/capacity, (2) present intent to create a trust, (3) a trustee, (4) res, (5) definite beneficiaries and (6) valid purpose.

Here, there is no evidence Settlors did not have capacity; Settlor named himself trustee; Settlor and Dawn are definite beneficiaries; and Settlor's execution of the agreement evidenced his present intent to create the trust. At the time the trust was created, however, Settlor did not have any interest in the sole proceeds, which were to be the trust property. If a settlor declares a trust w/o an interest in the trust property, a gratuitous promise to form a trust results.

If a gratuitous promise to form a trust is made, when the settlor does receive an interest in the declared trust property, the trust is not automatically formed. Rather, Settlor must re-manifest his/her intent to form the trust after the interest is received, either by words or conduct.

Here, Settlor's re-manifested his intent to create the trust by depositing the proceeds to an account for "Settlor, as Trustee of Settlor's Family Trust." Thus, the trust was validly formed but not until four years ago.

2. Bill is entitled to the entire estate of In-Law. A testator's will can designate a devise to a will, but the will must be created before testator's death or the gift will not be valid.

Here, In-Law mistakenly thought the Settlor's Family Trust had been formed and left his estate to the trust. As discussed above, however, the trust was not formed until four years ago and one year after In-Law's death.

Since the trust was not formed prior to In-Law's death, her devise to the trust failed. There is no evidence of a residuary beneficiary, so the $300,000 estate must be distributed intestate. Bill is the heir to In-Law under intestacy, so he will take the entire estate.

3. Settlor's trust agreement contained a spend-thrift clause prohibiting Settlor's creditors from reaching the trust assets. A spend-thrift clause is valid under Missouri law.

A creditor of a settlor who is also a beneficiary may reach the settlor's interest in the trust notwithstanding a spend-thrift clause. Also, if the settlor has the power to revoke the trust, creditors may require the settlor to do so and proceed after the assets.

The above remedies would have been available to Victim notwithstanding Settlor's inclusion of the spend-thrift clause in the trust agreement. However, because Settlor has died according to the trust terms all assets were to be distributed to Dawn. Settlor, therefore, has no interest in the trust anymore, and victim cannot reach the trust assets.

02-06 MEE 1 Example 3

Question 1 - Trusts

Part 1

Settlor attempted to create a self-declaration, inter vivos, support trust. The elements to create a trust are that 1) the settlor 2) delivers 3) to trustee 4) legal title to property (otherwise known as trust res) 5) with the intent to benefit the beneficiaries 6) for no invalid purpose. In the case of a self-declaration trust, the element of delivery to the trustee is not required.

Seven years ago, Settlor attempted to create a trust. However, settlor's trust failed at that time for lack of res. The res requirement means that a trust must be funded with certain and identifiable property. Settlor stated, "I expect to sell some stock and to fund this trust with the sale proceeds." He did not set aside certain and identifiable stock to fund the trust. Therefore, the trust failed for want of res 7 years ago.

The next question is whether Settlor or In-Law's subsequent funding of the trust validly created a trust. In this case, Settlor's funding of the trust 3 years after he declared it validly created the trust. Settlor's earlier attempt failed for lack of res. However, Settlor reaffirmed his intent to create the trust by opening a bank account in the name of the trust and funding it. Therefore, Settlor's reaffirmation and funding the trust created a valid trust.

Normally, a trust will fail if there is noone to enforce it. In this case, Settlor is both the trustee and the beneficiary. However, Settlor named his daughter Dawn as a beneficiary after he dies. Thus, Dawn is entitled to enforce the trust so it is valid.

Part 2

The issue is whether In-Law's estate can fund a future trust. If In-Law's estate can fund the trust, then the trust goes to the estate and not to In-Law's brother Bill through intestacy. In-Law executed a will five years ago that left her entire $300,000 estate to Settlor's Family Trust. At

that time, the trust had not been validly created for lack of res. However, the res requirement can be fulfilled by a valid pourover clause in a will as long as the trust is validly identified in the will. In this case, In-Law stated that she meant to leave her entire estate to the Settlor's Family Trust. Thus, the trust is validly identified and her gift valid. It does not matter that the trust has not yet been established or reaffirmed. The gift of the $300,000 pours over into the trust once it is established. Since In-Law left her entire estate to the Trust and that gift was valid, Bill is not entitled to any intestate share.

Part 3:

Settlor created an inter vivos, self declaration, support trust. Further, settlor also included language similar to a spendthrift clause. Settlor stated that "neither my creditors nor Dawn's creditors can reach the trust assets to satisfy their claims and neither of us is free to sell or otherwise transfer our respective trust interests." A spendthrift trust is set up to benefit the beneficiary and to give him/her support for his/her life. A spendthrift clause is valid and enforceable. However, Settlor did not state that his trust is irrevocable. As such, creditors can reach the principal to the same extend Settlor can. Settlor states that neither he nor Dawn can sell their interest, but he does not state that the trust cannot be revoked. Thus, creditors actually have more rights in the trust than Settlor.

Since Victim has obtained a tort judgment against settlor for $75,000, Victim can get to the principal as a creditor can. Thus, Victim is entitled to his judgment. It does not matter that Settlor passed away prior to the dispute being resolved. Victim may still reach the trust to enforce his judgment.

02-06 MEE 2 Example 1

1. Yes, Ped can. The issue is whether a principal/employer be held liable to torts committed by its agent/employee. Generally, an employer is liable for the torts committed by its employee if a) the employer/employee relationship in fact existed (and the "employee" was not really just an independent contractor) and b) the tort was committed within the scope of employment.

In determining whether a tort was within the scope of employment, courts will consider whether the tort occurred during the "time and space" of employment, whether the activity was of the type the employee was hired to perform, and whether the employee's activity was motivated by a desire to benefit the employer.

In this case, the facts provide that Sales was an actual employee of Dealer, employed by Dealer full-time. The only issue, then, is whether the injury to Ped was within the scope of employment.

Sales's delivery of the SUV was not necessarily of the kind of activity he was hired to perform as a salesman especially since he was "off the clock" for the day. However, he was delivering the vehicle at the express direction of Dealer, his boss, in an activity related to the business, and will thus likely be considered a part of his "job."

Further, his activity in driving the SUV to Dealer, and driving quickly so as not to be late, was most likely motivated by a desire to serve and benefit Dealer. Finally, the accident happened within the time and space of employment. A "frolic," a total departure from an assigned task, is not within the scope of employment, while a mere departure (a "detour") is. Here, Sales's activities in helping his friend move would most likely constitute a frolic, as it was a total departure from his task of delivering the SUV to Rich. The injury to Ped, though, did not happen during this frolic. Rather, it happened when Sales resumed his assigned task and started driving to Rich's residence.

Dealer will thus be held vicariously liable for Sales's negligence through the doctrine of respondeat superior.

2. Yes, he must. An agent/employee has a duty of obedience to the principle/employer to follow all of the employer's reasonable instructions. The employee also owes his employer a duty of loyalty, including a duty not to receive secret profits to the detriment of the employer. If an employee breaches a duty, the employer can recover damages caused thereby, and can disgorge the employee of any profits resulting from the breach.

In this case, Sales breached his duty to obey Dealer's order not to stop anywhere on his way to deliver the vehicle. He also received a secret profit for services he performed using Dealer's inventory. Dealer is thus entitled to recover the $200.00.

02-06 MEE 2 Example 2

1. Ped probably can recover from Dealer for Sale's negligence. At issue is whether an employer is vicariously liable for a tort committed by its employee within the ordinary scope of employment, but after the employee was on a frolic.

An employer is vicariously liable for torts committed by an employee under the doctrine of respondeat superior if: 1) an employer – employee relationship exists and 2) the tort was committed within the ordinary scope of employment. Mere detours of the employees are still considered within the scope of employment; frolics, however, are not within the scope of employment. Thus, if an employee commits a tort while on a frolic, the employer will not be vicariously liable.

Here, an employer – employee relationship exists between Dealer and Sales because the facts state that Sales is a full-time salesperson employed by Dealer. Further, delivery of the SUV to Rich's house was within the ordinary scope of Sales' employment. Although Sales was a salesman and not a deliveryman, and although Dealer did not normally deliver SUVs to its customer, Dealer instructed Sales to deliver the SUV and thus it was within Sales' ordinary scope of employment. Dealer may argue that Sales was off on a frolic when he went to Friend's house and that the tort was committed while and because of Sales' frolic. Sales was definitely on a frolic and not on a detour. Sales helped Friend for several hours. The tort, however, occurred after the frolic, while Sales was on his way to Rich's house. Dealer, therefore, will not escape vicarious liability for Sales' negligence.

2. Yes. Sales must give Dealer the $200 he earned helping Friend move. At issue is whether an agent must account to his principals for proceeds received.

An agent owes fiduciary duties to his principal, including the duty of care, duty of loyalty, duty to account for proceeds/profits received, and the duty to obey reasonable instructions. As part of an agent's duty of loyalty, he must give his principal the utmost loyalty and put his principal's interests above all others. The agent may not make a profit or benefit at the expense of the principal (unless there is material disclosure and ratification). As part of an agent's duty to account for proceeds received, the agent must turn over to the principal any proceeds received while on the job.

Here, Sales is an agent and Dealer is his principal because an employer – employee relationship exists. As such, Sales owes Dealer the fiduciary duties discussed above. As part of Sales' duty of loyalty, he cannot keep the $200 from Friend. To do so would be to benefit at the expense of Dealer. Further, as part of Sales' duty to account for proceeds received, Sales must give Dealer the $200 he received from Friend.

02-06 MEE 2 Example 3

1. Ped will recover for Sales negligence from Dealer. In Missouri, an employer is liable for the torts of his employee if the employee was acting within the scope of his employment, which includes frolics, or slight deviations from an employee's employment. However, an employer is not liable for torts committed by an employee who is on a "detour," which is a major deviation from the employee's scope of employment.

Here, Sales was a full-time salesperson for Dealer. Although he was not acting within his normal function as a salesperson by driving the SUV to Rich, Dealer asked Sales, as an employee to deliver the car to Rich, a customer. Dealer wished to please his customer, Rich, and Dealer may have delivered SUVs in the past. Even though it was the end of the workday, Dealer's explicit instructions to Sales establish that Dealer still had "control" over Sales and that Sales was acting as an employer for Dealer rather than independent contractor.

Additionally, even though Sales undoubtedly committed a so-called "detour" by helping his friend move, Sales ran over Ped while driving the SUV to Rich's, which was within the scope of his employment for Dealer, who specifically told Sales not to speed.

Therefore, Dealer will be liable to Ped under the doctrine of respondeat superior.

2. Sales, as an agent must give Dealer the $200.

An agent owes his principal 5 duties: a duty not to compute, a duty to act with reasonable care, a duty to obey, a duty of loyalty, and a duty to account for all money and property.

Here, as an agent, Sales specifically violated Dealer's, the principal, instructions by stopping to help Friend move. Sales as an agent violated his duty of loyalty and duty to account for all money ($200) and property of the agent-principal relationship. Furthermore, Sales was using his principal's, Dealer, equipment (SUV) in a manner that the principal had not authorized.

02-06 MEE 3 Example 1

1. The federal court would have jurisdiction based on diversity. At issue in this question is the difference between residence and domicile, whether a federal defense is sufficient to assert federal question jurisdiction, and whether plaintiff's claims of inapplicability of the first amenment can be a basis to assert federal question jurisdiction.

For a federal court to have diversity jurisdiction you must have citzens of differnt states, and an amount in controversy over 75,000. In general citizenship is determined by domicile, which is presence in a state and intent to remain in the state. While residence would be presence in a state without the intent to remain. Diversity is determined at the time suit is filed.

The facts demonstrate a possible issue for defendant who has lived in State B for three years but ferevently declares State A his home. He tells people he wants to return to state A someday. This is not sufficient, presence in a state for three years will deem you a resident of that state. Defendant pays taxes and owns property in State B, thereby furthering the claim he is a defendant of State B. Allowing a defendant to maintain his wishes as a consideration for diversity purposes would surely lead to no diveristy in the federal court system, an unjust result.

For a federal court to have federal question jurisdiction the palintiffs claims must arise from a federal law, or under the constitution of the United States. Just asserting a federal defesne is never enough to allow the court to have federal question jurisdiction.

The facts indicate just a situation. Plaintiff's claims are "under applicable state law." Plaintiff has not raised any federal claims, defendant has asserted a federal defense, and plaintiff has asserted that the federal defense is not applicable. Based on the facts there is no federal question jurisdiction. It should be noted if there was a separate and indendent federal claim the federal court could exercise supplemental jurisdiction of the state claim, but that is not the case here.

2. The federal court in state A has personal jurisdiction over the defendat. At issue is what are the requirement for personal jurisdiction related to a website. The standard for determining whether a court has personal jurisdiction is whether the defendant has sufficient minmum contact or an aggregation of contacts that make exercising personal jurisdiction fair under the circumstances so as not to offend the notion of fair play and substantial justice. Court will look to whehter the defendant has purposefully availed himself of doing business in the forum state or reached out to the state, mere fortuitous contacts will not be enough. Whether the defendant can foresee being haled into court in the forum state, whehter the interest of the interstate judicial systems is served, whether convenience of the parties and witnesses make exercising jurisidiction proper. It should be noted internet web sites present a unique problem and the federal courts have adopted the Zippo sliding scale approach which judges the website on interactivity, the more interactive, the more likely the court will exercise jurisdiction, the Zippo test also looks at where the information is exchanged between the host and customer computer.

The following facts favor in exercising personal jurisdiction. Defendant has targeted politicians and events exclusively in State A, going to the forseeability of being sued there and the fact that defendant has chosen to reach out to state A, these are not mere fortuitous contacts, but purposeful contacts. Defendant earns advertising revenue from State A because most advertisers on the site are state A businesses, defedant has therefore derived a benefit from state A. The computer is located in State B, or the server I suppose is what it would be called, this weighs against exercising personal jurisdiction. Additionally, under Zippo, it is clear the website is not really very interactive because the user cannot post information to the site but is limited to downloading.

Based on the facts I believe state A could exercise jurisdiction for the main reason that the defendant reached out to State A by specifically targeting the political figures and issues in that state. Defendatn should have seen being sued in State A.

02-06 MEE 3 Example 2

1.

A federal district court would have subject matter jurisdiction based on diversity of citizenship but would not have arising under jurisdiction.

At issue is on what basis may subject matter jurisdiction be established in this action. Subject matter jurisdiction is the power of the Federal Court over the subject matter of the lawsuit. Federal courts are courts of limited jurisdiction. Thus, there must be an independent jurisdictional basis for each claim. Subject matter jurisdiction in Federal Court may arise in two ways:

1. Diversity Jurisdiction, meaning that all plaintiffs are citizens of different states than all defendants and the amount in controversy exceeds $75,000. For diversity purposes, citizenship means domicile. Domicile is where one resides and intends to stay indefinitately. A new domicile does not become your domicile of choice until you reside there and intend that to be your domicile.

2. Arising Under Jurisdiction, meaning that the plaintiff's action arises under Federal law based on the face off the plaintiff's well plead complaint, and not merely on a possible defense to the lawsuit. Furthermore, a federal court may exercise supplemental jurisdiction over other claims where the original claim is based on arising under jurisdiction so long as the supplemental claims arises under a "common nucleus of operative fact."

Diversity Jurisdiction

In the case at hand, Plaintiff is a citizen of State A, as that is where she resides and intends to stay, thus making state A her state of domicile. Defendant on the other hand lives in state B. However, he states that he still considers State A "home" and inteds to return "someday," but that he is "happy in State B for now." Thus, there is an argument that his domicile of choice remains in State A, in which case there would be no diversity jurisdiction. On the other hand, there is also the argument that Defendant's domicile is now State B. He votes, pays, taxes, owns property and has resided only in State B for the past 3 years. He says he intends to return "someday" to state A but there is no definite time for doing so. Thus, Defendant's domicile is likely to be declared state B as resides in State B and intends to stay there

indefinitely. Furthermore, the compalint alleges $200,000 in damages plus $1,000,000 in punitive damages such that the amount in controversy exceeds the $75,000 minimum. Thus, there is likely diversity jurisdiction in federal court.

Arising Under Jurisdiction

In the case at hand, the alleged complaint is based on state law, not federal law. The fact that Defendant intends to assert the First Amendment is immaterial since Arising Under Jurisdiction may not be based on a defense brought under federal law.

Thus, Plaintiff's action may not be based on Arising Under Jurisdiction.

2.

The United States District Court will not have personal jurisdiction over the defendant.

At issue is whether the United States District Court will have personal jurisdiction over the defendant.

Personal Jurisdiction is the power of the federal court over the defendant. Personal jurisdiction in federal court is based on the laws of the state in which it sits. As a general rule, in order for personal jurisdiction to exist over a defendant, two things must be true:

1. The law of the state in which the federal court sits must provide for personal jurisdiction; and
2. The law of that state must be constitutional.

State A allows exercise of jurisdiction over absent defendants to the "full extent permitted by the due process clause of the United States Constitutional. In order for personal jurisdiction to be constitutional, there must be such "minimal contacts" between the defendant and the forum state such that exercising jurisdiction over the defendant does not violate "traditional notions of fair play and substantial justice." The issue then becomes whether the defendant purposefully availed himself to the privileges of doing business in the state. Put another way, could the Defendant reasonably anticipate being hailed to the courts of State A.

In the case at hand, Defendant is not a resident of State A, but rather State B. The central computer that people access when they view the website is located in State B. On the other hand, he accepts advertising directed to State A and he reports on news mainly geared towards his constituents in State A. However, under most State-Long Arm statutes, mere solicitation of business in another state is not enough. This situation is somewhat analagous to that situation

since nothing actually transpires from Defendant's end in State A. While it is a close call, these two facts are not likely enough to establish that he is subject to personal jurisdiction. Mere advertisements and the fact that his work is directed to an audience of people in State A is not likely going to be enough to establish the minimal contacts to meet constitutional standards.

As such, the United States District Court will not have personal jurisdiction over Defendant.

02-06 MEE 3 Example 3

Question 3 Sub part 1

The Federal district court would have subject matter jurisdiction over the plaintiff based on diversity.
The Federal courts are courts of limited jurisdiction. There are two methods of obtaining subject matter jurisdiction. The first method is if a federal question is at issue in the Plaintiff's case. Raising a federal question in defense is insufficient to allow federal issue jurisdiction. The second method is if there is complete diversity of citizenship between all plaintiffs and all defendants and the amount in controversy, not including punitive damages is greater than $75,000.

The complaint is incorrect with repect to Federal question grounds. Federal Subject matter jursidiction fails under the first test. The issue raised by the plaintiff is a tort issue of defamation. The fact that the defendant is using the first amendment right of free speech, a federal question, as his defense is insufficient to establish federal court jurisdiction.

Federal Subject matter jurisdiction is valid under the diversity test.
First, the court must establish the domiciles of the parties. If they are actually from the different states, diversity is established. The rule for determining domicile is "presence with the intent to stay indefinitely."
In this case the defendant says he would like to move back to state A sometime, but state B is OK for now. Someday may never come. The defendant lives, votes and pays taxes in state B. The defendant says he still considers state A home. None of these statements are relevant in determining the defendant's domicile. The relevant factors are presence and intent to stay indefinitely and "someday" indicates that he may never return to state A.

Having established defendant is a domiciliary of state A, the domicile of the Plaintiff must be established. The facts clearly state that the plaintiff is both a resident and a domiciliary of state A

and therefore diversity is set.

The amount in controversy is $200,000, this is more than the $75,000 limit to establish diversity jurisdiction.

Therefore, since the plaintiff and the defendant are domiciliaries of different states and the amount in controversy is beyond $75000, there is diversity jurisdiction.

Question 3 sub part 2

The district court would have personal jurisdiction over the defendant.

In order to deterimine whether there is personal jurisdiction over a defendant, the court applies the test from *International shoe v. Washington.* The test is "whether subjecting the defendant to jurisdiction would violate traditional notions of fair play and substantial justice." In applying the test, the court determines whether the defenant has sufficient notice and contact with the forum state. The defendant's contact must be the result of purposeful availment of the benefits of the forum state and cannot be the result of actions of a third party. The quantity and the quality of the contacts are determined. There are two types of personal jurisdiction: 1)specific jurisdiction and 2)general jurisdiction. Specific jurisdiction arises from a specific contact or occurrance, for example a tort claim or one contract. General personal jursidiction results from continuous contact with the forum state.

The posting of the content referring to State A is not in and of itself directed at state A. The content sits on the server in state B and State A citizens "come to it" to view the content. By posting the content, the defendant is not "purposefully availing himself" of the benefits of state A. However, in applying the facts in this case, the defendant is purposefully availing himself of the benefits of state A by accepting the advertising dollars from the state A companies. He is directing the content of his website to the interests of State A citizens and therefore to the interests of State A advertisers.

Therfore, since the plaintiff generates his livelihood from state A advertizers it would not violate

traditional notions of fair play and substantial justice for State A to exercise jurisdiction over the plaintiff. His continuous contact with state A of receiving money for advertising is sufficient "purposeful availment."

02-06 MEE 5 Example 1

1. The special shareholder meeting called to dissolve Green was not properly held. At issue is whether proper notice was given. In Missouri, when a corporation is proposing to be dissolved, the directors must vote a resolution. Once this passes, the directors must give notice of the special meeting to vote on the resolution. The notice must include the date and location of the meeting and the purpose of the special meeting. The notice must be sent to all shareholders on record as of the record date. When dissolving, the corporation 2/3's of all shareholders and classes adversely affected must vote for the proposal.

In this case, the notice of the special meeting stated the date and location of the meeting. However, the notice did not state the purpose of the meeting. Without proper notice, any actions at the meeting were void. In addition to the notice missing the purpose of the meeting, the articles of incorporation allowed the holders of Class A Preferred Stock to vote. The holders of these shares would be required to receive notice. This occurred because the articles of incorporation allowed voting when the quarterly dividend has not been paid for four consecutive quarters. This occurred and the Class A Preferred Shareholders were entitled to vote on all matters until paid and entitled to receive notice.

Even if the dividend had been paid, these shares would probably be entitled to vote. Because a dissolution would adversely affect these shares (eliminating a quarterly dividend), these shares are entitled to vote. However, a shareholder may waive improper notice by showing up and voting his shares. Ed did this. Deb did not show and vote her shares (and neither did Ed as explained below). Therefore, although Ed waived proper notice, Deb did not and the special shareholder meeting was not properly held.

2. The proposal to dissolve Green was not properly adopted by its shareholders. At issue is whether Deb gave Ed a proper proxy to vote her shares. In Missouri, a proxy may be given if it is 1) in writing, 2) signed by the shareholder 3) authorizing the person to vote the shares 4) and it is given to the secretary of the corporation. The proxy is revocable and only valid for 11 months.

In this case, Deb asked Ed to serve as her proxy. The parties did not have a writing that was given to the secretary. Therefore, the proxy was not valid and Ed could not vote the shares.

In Missouri, to hold a meeting a quorum must be present. A quorum is a majority of shares authorized to vote at the meeting. In this case, 400 shares were authorized to vote at the meeting (100 Common and 300 Class A Preferred as discussed above). Without a valid proxy, Ed was the only shareholder at the meeting. With ownership of 200 shares he did not meet quorum of 201. Therefore, the proposal to dissolve Green was not properly adopted by its shareholders.

02-06 MEE 5 Example 2

1. No. Any action by shareholders of a corporation must take place at a validly – held meeting. A special meeting requires notice to all shareholders entitled to vote, specifying when the meeting will take place and the special purpose of the meeting. Anything that takes place at a special meeting where notice was not properly given is void, unless those who did not receive notice waive the failure of notice by attending the meeting (unless they expressly, specifically attend for the sole purpose of objecting to the failure of notice).

In this case, notice was not properly given to either shareholder. Deb received notice that did not specify the purpose of the meeting, and Ed, entitled to vote because no preferred dividends had been paid for more than four consecutive quarters, received no notice at all. Ed, however, waived the failure of notice when he attended the meeting and participated in the vote. It can be argued that Deb waived as well, by instructing Ed to vote her shares, and thus was "present" at the meeting by proxy. However, proxies must be in writing, authorizing someone to vote one's shares, directed to the secretary of the corporation, signed by the record shareholder, and only last 11 months.

Here, the proxy was oral, and thus ineffective. The meeting was not properly held.

Also, there was no quorum (see answer to part 2 below).

2. A fundamental corporate change, such as dissolution of the corporation, must be approved by the shareholders at a properly-called special meeting by a vote of 2/3 of all outstanding shares entitled to vote (plus 2/3 of all outstanding shares of any class negatively affected by the change).

As described above, the meeting was not properly called and the vote thus ineffective. Even if the meeting were proper, the proposal still was not adopted. Quorum was not reached. A majority of outstanding shares must be present at a meeting in order to conduct business. The shares must be present by person or by proxy.

As described above the oral proxy was ineffective. The 200 of 400 shares that were present were not a majority. Further, even if a quorum were present, the proposal did not receive a 2/3 vote.

02-06 MEE 5 Example 3

1. A shareholder meeting to dissolve requires a special meeting that is properly noticed to all voting shareholders. The notice must include:
    1) Time of meeting
     - here was give of Oct 15
    2) Place of meeting
     - here principal office
    3) Purpose for meeting
     - this was not included in the notice, so notice was invalid

The notice must be sent 10 – 70 days prior to the meeting. Here notice was received by Deb approximately 35 days prior to the meeting. Ed never received notice, but he should have because he was entitled to vote due to four consecutive no dividend quarters.

If these notice problems are not waived then any action taken at the meeting is void. Notice failures may be waived by attendance at meeting or in writing.

Here Ed was in attendance, so he waived the notice issue. The question is whether Deb was "in attendance" at the meeting. If she had a valid proxy then she would be in attendance.

To have a valid proxy the following must occur:
    1) Signed writing
     – did not occur
    2) Transferring right to vote
     – no writing
    3) Directed to Secretary of Corp
     – no writing

The proxy agreement was never valid so Deb was not in attendance and did not waive the failure to state a purpose of meeting in the notice.

The meeting due to the notice problems was not properly held.

2. Any action for a fundamental change in a corp. such as dissolution requires:
    1) A valid meeting
     – did not occur (see above)
    2) A super majority 2/3 vote.
     – The meeting had Ed voting his 200 share to dissolve. Under normal circumstances a meeting must have a quorum of a majority of voting shares. And any action requires a majority of the quorum.
     With these types of issues, it requires a 2/3 vote of all shares (voting/nonvoting) and a 2/3 vote of all affected shares. Here only ½ of the share where present and voting. Although 100% voted in favor it did not meet 2/3 super majority.

Even if Deb's vote through Ed (proxy) had counted it would not have been enough.

Proposal to dissolve not properly adopted.

02-06 MEE 6 Example 1

1. A security interest attaches when the creditor gives value, the debtor has or obtains rights in the property used as collateral and there is valid security agreement – signed, in a record, indicating an intent to create a security interest and adequately describing the property to be secured. "Inventory" is a categorization including any items held for sale or lease by the debtor in the ordinary course of business. After acquired clauses are sufficient to establish security interests in later obtained items, and all valid and enforceable w/regard to inventory. Bank gave value to G when it loaned the $1 million to G, they executed the agreement, and thus Bank's interest in the property therefore attaches to all inventory as it is acquired by the debtor (Giant).

Bank's right to repossess and sell the speakers turns on what rights Giant had vested in the speakers by virtue of the consignment agreement. Banks interest attaches to whatever interest G had in the speakers, which apparently included the right to possess the speakers, sell the speakers, and a right to a portion of the proceeds from the sale thereof. Bank therefore had a right to whatever proportion the proceeds of the sale was dictated by the terms of the consignment agreement.

Default on the loan gives the creditor the right to repossession of the secured items – which may be done by self-help w/o a breach of the peace. The creditor is entitled to take the proceeds generated from a commercially reasonable sale held after proper notice towards satisfaction of the debt owed.

The facts indicate that Bank complied w/all necessary requirements and therefore was right to repossess and sell the speakers in which it held a partial security interest.

2. Specialty has the right to recover the proceeds from the sale up to amount of interest independently retained by Specialty in the speakers. Since Specialty retained ownership of the speakers, Bank interest can only attach to the rights held by Giant – this does not include the proceeds generated attributable to Specialty's proportionate interest in the speakers.

3. The consignment looks similar to a PMSI in inventory. Specialty could have achieved its purpose and better protected its interest by financing the sale of the speakers to Giant – then, the "remaining purchase price" Specialty now receives would be the cost of the speakers to Giant, while the commission would be Giant's profits. As the holder of a PMSI in inventory, Specialty could have achieved a priority interest in the speakers so long as Specialty filed a properly executed and authenticated financing statement [including the names of debtor, a description of the speakers, and the name of Specialty as well as addresses of both parties] w/the Secretary of State w/in 20 days of Giant receiving possession of speakers and by sending notice to all other prospective or current holders of sec interests in Giant's inventory. This would be sufficient to perfect its PMSI in inventory, giving it priority over all other perfected secured creditors – including Bank, w/its after-acquired interest in Giant's inventory.

02-06 MEE 6 Example 2

1. Did Bank have the right to repossess and sell Specialty's speakers?

Inasmuch as Bank had a perfected security interest in Giant's inventory, Bank had priority in the speakers – even over Specialty, the manufacturer and owner. As a result, Bank was entitled to repossess the speakers, as part of Giant's inventory, upon Giant's default.

This rule, while initially counterintuitive, is based on the fact that Giant was a consignment shop – thus, Giant's inventory was consigned goods (i.e., goods that belong to parties other than the consignment shop. In order for a manufacturer, such as Specialty to protect itself, it should have first perfected its interest in the speakers by filing a financing statement on the same. (See #3, below.) Unless the consignment goods were formerly consumer goods or were worth less than $1000, perfection is necessary to protect the manufacturer's interest. Here, the goods/stereos were obviously worth more than $1000 (worth $2000 each) AND they constituted inventory for both Specialty and Giant (a good is judged by whose hands it is in; thus, a stereo can only be consumer goods one purchased by a consumer). Consequently, Specialty had no protection against Bank's security interest, leaving Bank w/the right to repossess and sell them.

2. What rights, if any, does Specialty have against Bank to recover the proceeds from the sale?

Because Bank was privileged to repossess the stereos, and b/c Bank subsequently sold them in a commercially reasonable sale after providing notice of the same, Specialty has little right of recovery against Bank, if any. If the sale resulted in an amount in excess of Bank's interest, Specialty is, over course, entitled to whatever surplus resulted. Otherwise, Specialty should seek recovery from Giant. As the secured party w/priority, Bank is privileged to satisfy its security interest in the collateral (Giant's inventory, including the speakers) first, while Specialized, as an unsecured party is entitled only to any left overs.

3. What action might Specialty have taken to protect its interest in the speakers?

As noted above (in #1), Specialty should have filed a financing statement for the stereos, thereby perfecting its interest in them, at the time it entered the consignment agreement. This way, Specialty would have obtained priority in the speakers even over Bank, who perfected a security interest in the stereos thereafter. Because the stereos 1) were hot consumer goods, and 2) were worth more than $1000, Specialty's interest was not automatically protected due to the consignment agreement.

02-06 MEE 6 Example 3

1. Bank did have the right to repossess the speakers since there was perfection, the proper focus is on whether the security agreement between Bank and Giant attached to the speakers owned by Specialty.

In order for there to be attachment, there must be a written security agreement concerning property that the borrower has an interest in and value is given from the secured party to the borrower. Since there was a written agreement and the bank gave valuable consideration in the loan to Giant the main issue is whether Giant had an interest in the speakers. In addition the terms of the agreement are limited to inventory, therefore the speakers should be evaluated to see if they are "inventory."

Giant did have an interest in the speakers. Under a consignment agreement the consignee obtains an interest in the property. This interest is created as a result of the value of the agreement to the consignee. Here, through the consignment agreement, Giant had an interest in the speakers and therefore that requirement of attachment is met.

The speakers are properly includable as "inventory." The term is given its general meaning and absent any indication to the contrary, will include all inventory regardless of title. In this case there was no reason for Bank to be aware of the existence of Specialty's speakers at Giant's location. Absent any indication these speakers are included as part of inventory for the purposes of the security agreement.

Since the security agreement attached to Specialty's speakers, Bank had the right to sell them.

2. Specialty can only recover any excess Bank received from its sale. Since the sale was commercially reasonable and proper notice was given, Specialty can only recover from Bank to the extent that Bank receives excess funds at the sale over the amount it was due from Giant. If the sale did not yield more than the amount due; Specialty has no recovery against Bank.

3. If Specialty wanted to maintain the consignment sale nature, but protect its interests further it should have created a security interest in the speakers and properly attached and perfected that interest.

Since Giant had an interest in the speakers, the two other requirements for a valid attachment would need to be met. The giving of the speakers meets the consideration requirement. Therefore Specialty should have created a written security agreement. At this point its interest would then attach.

Specialty would then need to file the agreement to perfect its interest. This would then give Specialty a superior interest over Bank since it was perfected earlier.

In order to allow for a more fluid future transaction, the security agreement should include all future inventory specifically received from Specialty for consignment.

With a valid security interest, Specialty would protect its interest in the speakers more completely. In addition, the interest is more appropriately classified as a purchase money security agreement since the property secured was given by the secured party to the borrower. This will have priority over future interests.

02-06 MEE 7 Example 1

Dorothy's 120,000 probate estate should be distributed equally among the 6 grandchildren, and each grandchild will take 20,000. The great grandchild takes nothing.

Dorothy's Will

Dorothy's validly executed will controls the distribution of her probate estate. The will provides distribution to her heirs in accordance with the state intestacy statute.

Missouri provides for a per capita with rights of representation distribution. Using this method, the estate is divided in equal shares among each member of the decent's descendants at the level with at least one living member. If any descendant at that level is deceased, their heirs will proportionately take the share.

In this case, all 3 of Dorothy's children, A, B, C, predeceased her. Since Dorothy has no other heirs to worry about, the first level of distribution will occur at the grandchildren level since they are still alive. Therefore, each grandchild will take 1/6 of Dorothy's probate estate.

Was the lifetime gift to Grandchild 6 an advancement?

– No. The 60,000 Dorothy gave to grandchild 6 will not be treated as a lifetime-advancement of the grandchild's inheritance. To be treated as an advancement, the testator must make the gift with a clear intention that it be an advancement, and I also believe Missouri requires acknowledgment of advancements to be in writing and signed by the Testator. Here, Dorothy gave grandchild 6 the 60,000 five years before her will was even executed. Furthermore, she stated the gift was for grandchild 6 "because she loved" him/her. There is no indication whatsoever that the gift was intended as an advancement. Even if there was, there is no writing acknowledging it as an advancement.

Did the actions of Grandchild 1 cause him/her to be disinherited?

Not likely. In Missouri, and several other states, a person who kills the descendant/testator is not entitled to inherit and is treated as predeceasing the testator. However, "killer" statutes are generally only applied to cases of intentional or reckless homicide or manslaughter.

In this case, grandchild 1, inadvertently struck Dorothy which ultimately caused her death. Even though grandchild 1 was negligent, there is nothing in the facts to suggest she intentionally or recklessly struck Dorothy. As such, grandchild 1 should still be able to take her share of Dorothy's estate. If the killer statute were to apply, great grandchild one would take grandchild 1's share under the intestacy statute distribution provided by Dorothy's will.

02-06 MEE 7 Example 2

1. Dorothy's $120,000 estate should be distributed in equal shares of $20,000 each to her six grandchildren.

The relevant issues are: A) the presumption of lifetime advancements of testamentary shares, B) the effect of an unintentional slaying of a decedent on the slayer's share of the decedent's estate, and C) the Missouri scheme for intestate distribution.

A. PRESUMPTION OF LIFETIME ADVANCEMENTS. In Missouri, lifetime gifts by a testator are not presumed to be advancements on the donee's testamentary share of the testator's estate, unless either 1) the donor/testator made a contemporaneous written declaration that the gift was to be considered an advancement, 2) the donee subsequently signed a writing acknowledging similar treatment of the gift, or 3) the testators will indicates that the gift should operate as an advancement. In this case, the testator's only contemporaneous declaration evidenced no intent that the gift was to be treated as an advancement, the donee did not later acknowledge the gift as an advancement, and the will made no mention of the gift. Therefore, the gift will not be considered an advancement and will not affect 6's share.

B. EFFECT OF UNINTENTIONAL SLAYING. In Missouri, the intentional killing of a person will work to deprive the killer of all interests in the victim's estate, except that property held with right of survivorship between the victim and the killer will be severed, and the victim will end up with ½ of that property. However, an unintentional slaying will have no such effect. In this case, it appears likely that grandchild one can prove, by a preponderance of the evidence, that the killing was unintentional, and therefore the slaying will have no effect on grandchild 1's share of Dorothy's estate.

3. INTESTATE DISTRIBUTION. Dorothy's will adopted Missouri's intestate distribution scheme. Assuming Dorothy was not survived by a spouse, her issue will be entitled to her entire estate, per capita with right of representation. In this case, because there are no survivors at the first level of issue (children), the members of the next level of issue, grandchildren, will each take a per capita, or equal, share of the estate, or $20,000.

02-06 MEE 7 Example 3

1. MO intestate succession law provides for per capita w/representation distribution whereby "heirs take equally at the first generational level with a living heir."

Since all of Dorothy's children have predeceased her their shares pass by intestate (as per Dorothy's valid will) succession to her grandchildren in equal shares.

Dorothy was survived by all six and her estate equaled $120,000, which means that each of the grandchildren take $20,000. Dorothy's great grandchild takes nothing.

However, there are a few issues which should be examined. Grandchild 6 received a gift of $60,000 from Dorothy. Such a lifetime gift usually implies an advancement of one's intestate or testamentary disposition share.

To qualify as an advancement Dorothy would have had to 1) declare the $60,000 to be an advancement in 2) writing, contemporaneously, or Grandchild 6 would have had to acknowledge the $60,000 as an advancement in writing. However, none of that happened here.

As for Grandchild 1 accidentally killing Dorothy, it has no effect on her intestate share.

Most states have enacted "Slayer Statutes" which prohibit an heir or beneficiary from taking their share or devise if they "intentionally or feloniously" killed the decedent or testator.

There is no punishment for an accidental killing therefore Grandchild 1's share is 1/6 of the $120,000 just the other 5 grandchildren's shares are.